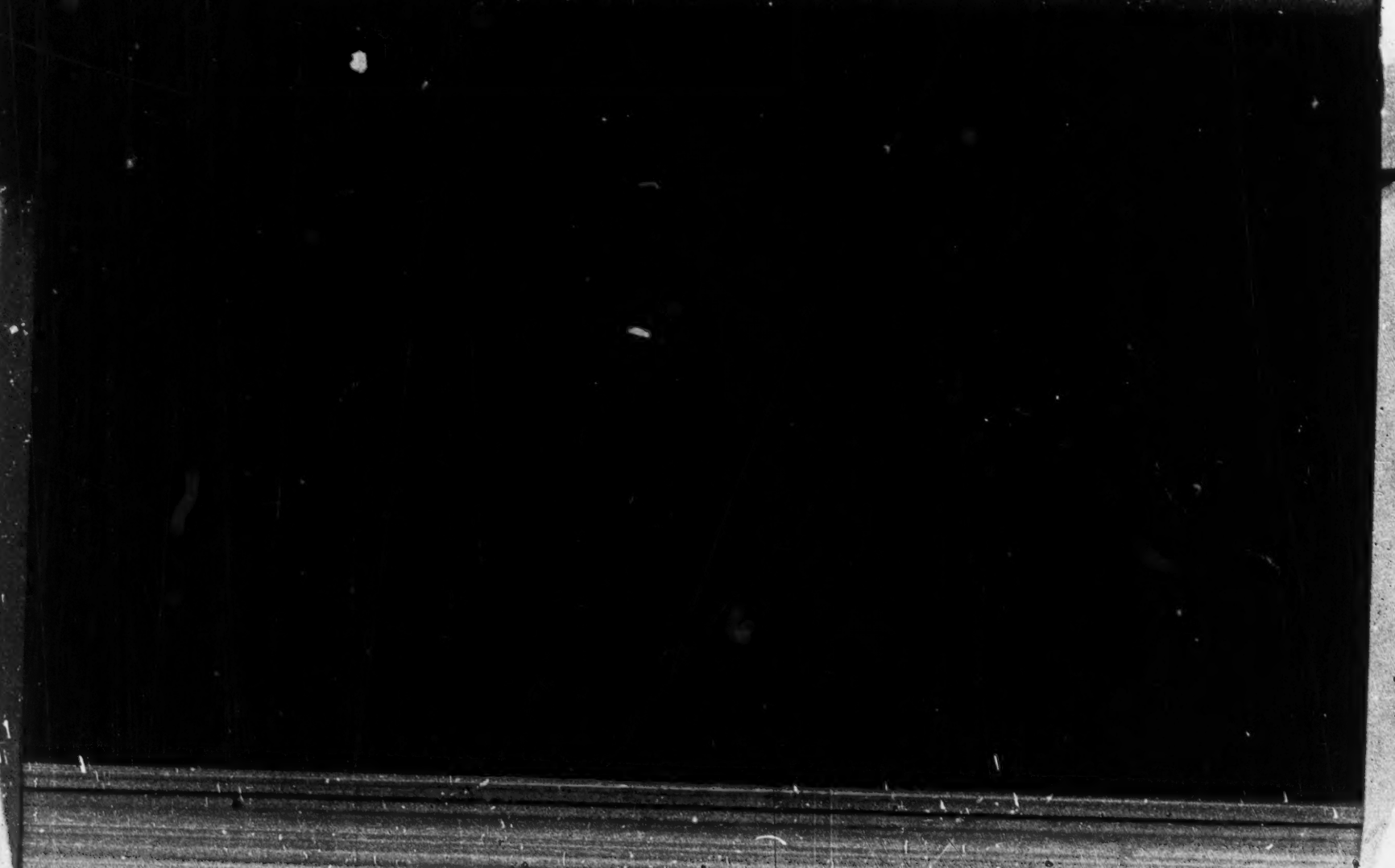

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In the Supreme Court of the United States

OCTOBER TERM, 1938

No. 12

D. F. STAHMANN, ANNA M. STAHMANN, AND JOYCE F. STAHMANN, DOING BUSINESS AS STAHMANN FARMS COMPANY, PETITIONERS

v.

S. P. VIDAL, COLLECTOR OF INTERNAL REVENUE FOR THE DISTRICT OF NEW MEXICO

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE TENTH CIRCUIT

BRIEF FOR THE RESPONDENT

OPINION BELOW

The opinion of the Circuit Court of Appeals (R. 26-30) is reported at 93 F. (2d) 902. The findings of fact and conclusions of law entered by the District Court are printed in the record at pages 14-16.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered December 27, 1937 (R. 30). A peti-

tion for rehearing was filed January 25, 1938, and was denied by the Circuit Court of Appeals on February 5, 1938 (R. 30). The petition for certiorari was filed March 16, 1938, and was granted April 25, 1938 (R. 32). The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

The writ of certiorari was limited to the question whether the petitioners, producers of cotton who paid the tax imposed by the Bankhead Cotton Act upon the ginner who ginned cotton grown by the petitioners, can maintain this action for recovery of the tax.

STATUTES AND OTHER AUTHORITIES INVOLVED

The pertinent statutes and other authorities involved are printed in the Appendix, *infra*, pp. 30–55.

STATEMENT

This action was instituted by the petitioners in the United States District Court for the District of New Mexico to recover the sum of $13,064.52 paid to the respondent under authority of the Bankhead Cotton Act, c. 157, 48 Stat. 598, *infra*. The action was based upon the alleged unconstitutionality of that Act. (R. 1–3.)

The respondent, in an amended answer, denied that the Act was unconstitutional and affirmatively alleged as a further defense that the petitioners

were not liable under the statute to pay the amount sued for; that if they paid to the respondent the amount sued for they did so in discharge of a liability imposed upon a person or persons other than the petitioners; and that, therefore, the petitioners were not entitled to maintain the action for recovery of the amount paid (R. 5–6).

A jury trial was waived in writing (R. 4) and the cause submitted to the court for decision upon a written stipulation of facts (R. 6–9) which was approved by the court (R. 9). A request for special findings of fact and conclusions, and a motion for judgment, were filed by the respondent (R. 10–14) and were denied by the court (R. 14). The respondent duly excepted (R. 16, 24). Upon consideration the court made findings of fact and conclusions of law in favor of the petitioners (R. 14–16) and entered judgment for the petitioners on January 30, 1937 (R. 16).

Upon appeal to the Circuit Court of Appeals for the Tenth Circuit that court, basing its decision upon the affirmative defense pleaded by the respondent, held that the tax imposed by the Bankhead Cotton Act, *infra*, was a tax imposed upon the ginning of cotton; that the ginner was made liable for the tax; that these petitioners, not being liable for the tax in question, made payment as volunteers, and that they therefore were not entitled to maintain this action for recovery. In view of its decision on this question, the court re-

frained from passing upon the alleged unconstitutionality of the Bankhead Cotton Act. (R. 26-30).

The facts alleged in the complaint and admitted in the respondent's amended answer, supplemented by the written stipulation of facts filed by the parties, are briefly as follows:

During the crop year 1934–1935 the petitioners were engaged in Dona Ana County, New Mexico, in the growing of cotton, and were and had been for many years prior thereto cultivating in excess of 2,000 acres of land. During that crop year they produced a quantity of cotton in excess of the allotment for which, under the terms of the Bankhead Cotton Act, they were entitled to obtain tax exemption certificates. The petitioners delivered this cotton to the Santo Tomas Gin Company of Mesquite, New Mexico, to be ginned. The Santo Tomas Gin Company ginned the petitioners' cotton and filed monthly returns with the respondent for the months of October, November, and December 1934 as the ginner of petitioners' cotton. The returns thus filed showed a tax due in the amount of $13,064.52. Of this amount the sum of $11,193.99 was assessed against the Santo Tomas Gin Company in December 1934, and was paid to the respondent by checks drawn by Stahmann Farms (the petitioners) payable to the Collector of Internal Revenue. These checks were dated November 27, 1934, November 28, 1934, and December 13, 1934, and were for the respective amounts of $9,131.44, $1,550.23,

and $512.32. The sum of $1,870.53 was assessed against the Santo Tomas Gin Company in January 1935 and was paid to the respondent by a check for that amount drawn by Stahmann Farms (the petitioners) payable to the Collector of Internal Revenue and bearing the date January 19, 1935. (R. 1, 2, 5–9.)

The Santo Tomas Gin Company declined to deliver the ginned cotton to the petitioners until the above assessments against it were paid. The respondent applied these payments by petitioners against the assessments outstanding on its books under the name of Santo Tomas Gin Company, Mesquite, New Mexico. (R. 7–8.)

On March 6, 1935, the petitioners filed a claim for refund of $13,064.52 with the Collector of Internal Revenue for the District of New Mexico, their claim being based upon the alleged unconstitutionality of the Bankhead Cotton Act. The Commissioner of Internal Revenue rejected this claim on August 22, 1935 (R. 8). This suit followed.

SUMMARY OF ARGUMENT

I

Section 4 (a) of the Bankhead Cotton Act imposed a tax on the ginning of cotton; Section 4 (c) provided that every person ginning cotton subject to tax under the Act should make monthly returns to the Collector of Internal Revenue, the tax to be

due and payable to the Collector at the time fixed for filing the return. There can be no dispute that the Act in terms designates the ginner as the taxpayer. Even though the tax be fixed with reference to the situation of the producer, and even though it was expected that the burden of the tax would be passed on to the producer, the ginner remains the one upon whom it was imposed and from whom it was to be collected. The fact that the ginner refused to deliver the cotton to the petitioners until its tax was paid, even if this amounted to legal duress, was compulsion proceeding from the ginner and not from the respondent Collector. Whether or not the ginner reimbursed itself from its customers, and whether or not this reimbursement arose through coercion, are matters of indifference to the Collector. Similarly, the fact that the ginner made payment through a check drawn by petitioners in no manner serves to make them the taxpayer. The tax was imposed upon and collected from the ginner, irrespective of the private arrangements for payment which he chose or was able to make with those from whom the Government sought no tax.

The provisions (Secs. 14 (a) and 20) for the refund of sums illegally collected under the Bankhead Cotton Act contemplate that only the taxpayer is empowered to take advantage of the remedy. The authorities seem uniformly to refuse to countenance so anomalous a situation as a system of revenue ad-

ministration by which persons other than the taxpayer could recover taxes illegally collected. Indeed, when attention turns to the common law roots of the Collector's liability, it is plain that he can not be subjected to a personal liability to a person from whom he has not compelled payment of the tax. *Elliott* v. *Swartwout*, 10 Pet. 137. The present statutory remedy against the Collector does not embrace any liability beyond that found in the common law action. *Lowe Bros. Co.* v. *United States*, 304 U. S. 302.

Petitioners rely upon decisions entered in certain exceptional cases, such as instances where the Collector has demanded payment of one not a taxpayer under the Act, or when the liability discharged was thought to be that of the one who made the payment. These cases plainly are inapplicable here.

The administration of the revenue laws would necessarily be disrupted if the Treasury were forced to accept arrangements independently made between private persons, and be held accountable for tax collections by one upon whom the tax was neither imposed nor from whom it was collected. The dangers latent in such a decision are illustrated by the fact that, at the time this suit was filed and decided below, there was no assurance that the Government would not be faced with suits for recovery of a tax both by the producer and by the ginner. A ginner would not seem to be estopped by any recov-

ery of the producer, and as the person upon whom the tax was imposed and from whom it was collected, the ginner would appear to have a much better standing to sue for recovery than would the producer. The possible defense that he had not borne the burden of the tax would not, in the absence of statutory sanction, be certain to be successful. Even though the burden of the tax was borne by petitioners, the fact remains that the tax was laid upon the ginner and on him alone. *Lash's Products Co.* v. *United States*, 278 U. S. 175. And, so far as the broader equities are material, it may be noted that petitioners received the benefit of higher prices obtained through crop reductions by their competitors.

II

The Second Deficiency Appropriation Act of 1938, approved June 25, 1938, in keeping with the consistent effort of Congress to remedy the maladjustments caused by the invalidation of taxes collected under the Agricultural Adjustment Act and the repeal of related acts, authorizes refund of amounts collected as a tax under the Bankhead Cotton Act. The refund is to be made either to the ginner of the cotton or to the owner of the cotton, according as it is shown that the claimant bore the burden of the tax. The Act thus makes provision for payment to petitioners of everything which they seek to recover in this suit, except their claims

for interest on the amounts paid as taxes, and thus eliminates any equitable argument which petitioners might have.

In addition, the Act makes quite plain the understanding of Congress that only those persons upon whom the tax is imposed and from whom it is collected have the right to bring suit for its recovery. In making the exceptional provision that the owner of the cotton might recover the tax imposed upon the ginner, if he showed that the burden of the tax was borne by him, Congress directed that for such purposes "the tax shall be considered to have been paid by the ginner to the United States for the account of such owner or owners." If Congress thought it necessary to enact a retroactive fiction to cover such a situation, it seems quite plain that without this provision the producer has no standing to assert claims which can be brought forward only by the taxpayer.

ARGUMENT

I

PETITIONERS, WHO PAID THE TAX LIABILITY OF ANOTHER, CANNOT MAINTAIN THIS ACTION TO RECOVER

A. THE GINNER WAS THE TAXPAYER

There seems little room for doubt that under the Bankhead Cotton Act, *infra*, the tax was imposed on and collected from the ginner, and the ginner alone.

Section 4 (a) of the Bankhead Cotton Act imposed a tax "on the ginning of cotton hereafter harvested during a crop year with respect to which this Act is in effect." Section 4 (c) provided that "Every person ginning any cotton subject to tax under this Act (whether as agent of the owner or otherwise) and every other person liable for tax under this Act shall make monthly returns under oath in duplicate and pay the taxes imposed by this Act to the collector for the district in which the ginning is done." It further provided that the tax shall, without assessment or notice, "be due and payable to the collector at the time so fixed for filing the return." The Commissioner's regulations were in accordance with these provisions. See Treasury Regulations 84 (1935 Edition), Articles 7, 8, 11, and 12, *infra*.[1]

There is no dispute that the Act in terms designates the ginner as the taxpayer. Petitioners, however, argue (Br. 16–18) that the imposition of, and exemptions from, the tax are fixed by matters

[1] The only exception to these provisions, and which is not applicable under the facts of this case, is contained in Section 4 (f), which provides that the tax shall not be collected upon the ginning of cotton which is to be stored by the producer either upon his farm or at some other place permitted by regulation. In such cases the payment of tax is postponed, the cotton being subjected to a lien, until bale tags are obtained, either by payment of the tax or by surrender of tax exemption certificates. See Articles 13 and 21 of Regulations 84 (1935 Edition), *infra*, covering returns by the ginner and producer and the payment of tax in such cases.

relating to the producer and not to the ginner, and that Congress plainly contemplated that the producer should bear the burden of the tax. This may be conceded. But it advances petitioners' case only to the point that the tax was imposed on the ginner with reference to the cotton ginned for a particular producer. The indisputable fact remains that the Act names the ginner as the taxpayer, that he is required to file the returns, and that the tax is assessed against him. It would be idle to contend that Congress did not expect the burden of the tax to be passed on to the ginner's customers; it would be equally idle to contend that the ginner was not the taxpayer named in the Act.

2. The question at this juncture thus reduces itself to whether anything in the transaction between the petitioners and the Santo Tomas Gin Company operated, or could operate, to make the petitioners the taxpayer under the Act.

The facts may briefly be restated: Petitioners produced cotton in excess of their allotment under the Bankhead Cotton Act. The Santo Tomas Gin Company ginned the excess cotton and filed returns with the respondent as the ginner of this cotton. The tax due under the Act was assessed against the Gin Company. The Gin Company refused to deliver the ginned cotton to petitioners until the assessments were paid. Petitioners drew checks for the assessed tax payable to respondent, who credited the amounts against the account of the Gin Company. (R. 1, 2, 5–9.)

Petitioners' claim to the status of a taxpayer thus rests on only two circumstances: (a) the Gin Company refused to deliver the cotton until its tax was paid; and (b) the check received by the respondent was drawn by petitioners. These factors cannot make petitioners the taxpayer under the Act.

a. Petitioners' argument proceeds largely upon the assumption that the tax involved was paid under compulsion and duress (Br. 15–16, 18). It is unnecessary to enter into the treacherous field fixing the nature of actionable duress and thus to determine whether withholding the ginned cotton, presumably with notice of the contemplated withholding before petitioners delivered it to the Gin Company, constitute duress. Whether or not this amounts to legal duress, the action was that of the Gin Company and not that of the respondent Collector. His concern began and ended with the payment of the tax imposed on the Gin Company. That taxpayer could meet the assessed tax out of its own pocket; it could increase its ginning charges by the amount of the tax, or even more; it could have the producer pay the tax on its behalf; or it could even prevail upon a kindly by-stander to pay the amount of the tax. These arrangements were a matter of indifference to the Collector; they concerned only the Gin Company and its customers. If there were duress in the ginning transaction, it was the duress of the Gin Company alone. The Collector did not participate in it and had no inter-

ct in its outcome. So far, therefore, as the Government was concerned, there was nothing in the supposed duress to which petitioners were subjected which served to make them taxpayers under the Act.

b. No more does the fact that the petitioners drew the check received by the respondent Collector serve to make them taxpayers under the Act. The tax was assessed against the Gin Company and the payment was credited to its account. Whether paid by cash, by a check drawn by the Gin Company, or by one who was a stranger to the Collector, was again a matter of indifference to the Collector. Whatever the private arrangements between the taxpayer and petitioners, they were mere volunteers so far as the Collector was concerned. Obviously, the husband whose check also covers his wife's income tax, or the corporation which pays the income tax of its employee, does not step into the shoes of the beneficiary of the payment and thus become the taxpayer. Whether the payment is the result of commercial or domestic coercion, a gift, or a loan, the Collector knows only that the tax has been paid by a volunteer. The taxpayer is still the one on whom the tax is imposed and to whose account it is credited.

It thus seems clear that under the Bankhead Cotton Act the ginner is the taxpayer and that no arrangement made between the ginner and the producer, of which the Collector knows nothing and as

to which he is indifferent, can serve to convert the producer into a taxpayer in the place of the ginner.

B. ONLY THE TAXPAYER CAN RECOVER THE TAX

1. The claim of the Gin Company has not and cannot be assigned to the petitioners. See Revised Statutes, Section 3477 (U. S. C., Title 31, Section 203); *United States* v. *Gillis*, 95 U. S. 407; *Ball* v. *Halsell*, 161 U. S. 72. Certainly, the petitioners should not be allowed to recover on an unassigned claim of the ginner when its specific assignment is forbidden.

2. With respect to the recovery of sums collected as tax under the Bankhead Cotton Act, Section 14 (a), *infra*, made applicable to such sums all provisions of law, including penalties, applicable with respect to taxes imposed by Section 800 of the Revenue Act of 1926, in so far as applicable. This seems to have been statutory recognition of the applicability of Section 3220 of the Revised Statutes,[2] *infra*, authorizing the Commissioner to credit or refund all taxes erroneously or illegally collected. Section 20 of the Bankhead Act authorized the filing of refund claims and the maintenance of suits to recover where refund was denied by the Commissioner.

These sections, naturally enough, contemplate that only taxpayers can have the benefit of their

[2] As amended by Section 1111 of the Revenue Act of 1926, c. 27, 44 Stat. 9, and Section 619 (b) of the Revenue Act of 1928, c. 852, 45 Stat. 791.

provisions. A system of revenue administration by which persons other than the taxpayer could recover taxes illegally collected would be an anomaly. It is plain that the authorities countenance no such unsatisfactory situation.

In a number of cases one corporation has voluntarily paid the tax of another, either a subsidiary or a predecessor, and the courts have refused to permit the volunteer to recover the tax, even though it could not legally have been collected from the taxpayer. *Ohio Locomotive Crane Co.* v. *Denman*, 73 F. (2d) 408 (C. C. A. 6th), certiorari denied, 294 U. S. 712; *Mahoning Inv. Co.* v. *United States*, 3 F. Supp. 622 (C. Cls.), certiorari denied, 291 U. S. 675; *Central Aguirre Sugar Co.* v. *United States*, 2 F. Supp. 538 (C. Cls.); *Wilson & Co.* v. *United States*, 15 F. Supp. 332 (C. Cls.); *Combined Industries, Inc.* v. *United States*, 15 F. Supp. 349 (C. Cls.). Similar results have been reached in other comparable situations. In *Wourdack* v. *Becker*, 55 F. (2d) 840 (C. C. A. 8th), certiorari denied, 286 U. S. 548, a former president of two dissolved corporations was denied recovery of additional taxes assessed against the corporations and voluntarily paid by him. In *Daube* v. *United States*, 59 F. (2d) 842 (C. Cls.), affirmed on another issue, 289 U. S. 367, the plaintiff had been allowed an over-assessment of a certain sum which he directed the Commissioner to credit against taxes due from a partnership of which he was a member. The Court of

Claims held that he could not recover the amount applied against the partnership tax although the credit was made after the period for collecting from the partnership had expired. In granting certiorari this Court limited its review to another question in the case, 288 U. S. 597. In *Clift & Goodrich* v. *United States*, 56 F. (2d) 751 (C. C. A. 2d), certiorari denied, 287 U. S. 617, a corporation organized in 1919 to take over the assets and business of a partnership voluntarily paid a tax which should have been paid for the partners for 1918 and the court denied recovery.

3. Petitioners bring this suit against the respondent as Collector. The action derives from the common law proceeding in assumpsit, when the Collector's liability was grounded on his voluntary payment of the taxes into the Treasury over the protest of the taxpayer. *Elliott* v. *Swartwout*, 10 Pet. 137. When Congress in 1839 provided that all taxes should be paid into the Treasury irrespective of protest, and provided for the refund of illegal taxes by the Secretary of the Treasury (c. 82, 5 Stat. 339), the common law basis of the action was removed. *Cary* v. *Curtis*, 3 How. 236; *Curtis's Administratrix* v. *Fiedler*, 2 Black 461, 478. The action has been revived by statute, as a convenient means of administering the revenue, and is now in essence a suit against the United States.[4] But the

[4] See Act of February 26, 1845, c. 22, 5 Stat. 727; *Nichols* v. *United States*, 7 Wall. 122, 126–127; *Barney* v. *Watson*,

tion retains the procedural consequences of a personal action and is available only in circumstances presenting some analogy to the common law action to recover taxes paid under protest. See *Patton v. Brady*, 184 U. S. 608, 612–615; *Smietanka* v. *Indiana Steel Co.*, 257 U. S. 1; *Sage* v. *United States*, 250 U. S. 33, 37; *Bankers Pocahontas Coal Co.* v. *Burnet*, 287 U. S. 308, 312; *Graham & Foster* v. *Goodcell*, 282 U. S. 409, 430–431.

Accordingly, in *Lowe Bros. Co.* v. *United States*, 301 U. S. 302, this Court held that the action of the Commissioner in collecting a tax by credit would not ground suit against the Collector. It said (p. 305):

> Since the suit allowed against the collector * * * was based on his personal liability, *Sage* v. *United States*, 250 U. S. 33; *Smietanka* v. *Indiana Steel Co.*, *supra*, no such suit will lie unless he has collected the tax.

These principles make it plain that the Collector is liable only for his own act in collecting the tax. He collected the tax only from Gin Company; his threats of distraint were directed against the Gin Company alone; the liability which was discharged

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U. S. 449, 452; *Arnson* v. *Murphy*, 109 U. S. 238, 240, 243; *Aufmordt* v. *Hedden*, 137 U. S. 310, 329; *Schoenfeld* v. *Hendricks*, 152 U. S. 691, 693; *Philadelphia* v. *Collector*, 5 Wall. 720, 731–735; *The Collector* v. *Hubbard*, 12 Wall. 1, 13–14; *Moore Ice Cream Co.* v. *Rose*, 289 U. S. 373, 382–383. See also *Ex parte Bakelite Corp.*, 279 U. S. 438, 451; *Crowell* v. *Benson*, 285 U. S. 22, 50–51.

was only that of the Gin Company. If the collection were unlawful, the Collector's liability ran only to the taxpayer; no act or threat of his compelled petitioners to make payment. Since "no statute has enlarged the collector's common law liability to suit" (*Lowe Bros. Co.* v. *United States, supra,* 306), and since compulsory collection by the defendant is a necessary basis of the common law action (*Elliott* v. *Swartwout, supra,* 152–157), it is plain that petitioners cannot maintain this suit to recover money voluntarily paid the respondent without any demand, coercion, or even request from respondent.

C. THE EXCEPTIONAL SITUATIONS, RELIED ON BY PETITIONERS, ARE INAPPLICABLE

Respondent does not differ with petitioners in their statement (Br. 25) that innumerable cases have been decided since 1924 wherein refund has been allowed of taxes voluntarily paid, "and which were thought to be due *from the tax payer* at the time he made the payment." [Italics added.] But this statement emphasizes the inapplicability of the cases relied upon by the petitioners (Br. 26–27).

The authorities cited by petitioners consist of one group, including *United States* v. *Jefferson Electric Co.,* 291 U. S. 386, and *Anniston Mfg. Co.* v. *Davis,* 301 U. S. 337 (Br. 26); *Moore Ice Cream Co.* v. *Rose,* 289 U. S. 373 (Br. 29); *Jenkins* v. *Smith,* 21 F. Supp. 433 (D. Conn.) (Br. 30); *Weir* v. *McGrath,* 52 F. (2d) 201 (S. D. Ohio), affirmed, 41 F.

(2d) 1021 (C. C. A. 6th) (Br. 31); and *Austin Nat. Bank* v. *Sheppard*, 71 S. W. (2d) 242 (Br. 32), which present no question with respect to payment by the claimant of an amount representing the tax liability of a third party. Each is a suit by the party primarily liable under the statute for the tax paid, each of which paid the amount involved, and each of which sued in its capacity as taxpayer under the statute. Each case involved the question whether all or a part of the amount paid by the claimant as its liability under the statute had been erroneously or illegally collected. Clearly these cases have no application to the facts involved in the instant case.

The authorities cited also include another group, consisting of *White* v. *Hopkins*, 51 F. (2d) 159 (C. C. A. 5th) (Br. 26), *Dorrance* v. *Phillips*, 85 F. (2d) 660 (C. C. A. 3d), and *United States* v. *S. F. Scott & Sons*, 69 F. (2d) 728 (C. C. A. 1st) (Br. 30), involving to some extent the question whether the amount sued for had been voluntarily paid to discharge the tax liability of the true taxpayer. This group of cases differs from the instant case in a very essential element. In each case either demand was made by the Collector upon the claimant as the party liable under the statute and payment was made under duress, as in the case of *White* v. *Hopkins, supra*, or the tax was paid by the claimant not to discharge the liability of another but to discharge a liability assumed to be its own liability

under the statute, as in *Dorrance* v. *Phillips*, supra, and *United States* v. *S. F. Scott & Sons*, supra. Compare *American Newspapers* v. *United States*, 20 F. Supp. 385 (S. D. N. Y.). *United States* v. *Arnold*, 89 F. (2d) 246 (C. C. A. 3d), cited at page 29 of the brief, presents a question similar to that decided by this Court in *Stone* v. *White*, 301 U. S. 532, and is probably overruled by the latter decision. This second group of cases clearly are distinguishable from the instant case where no claim was asserted by the respondent Collector against petitioners and payment was not mistakenly made to discharge any assumed liability on their part.

Standard Oil Co. v. *Bollinger*, 348 Ill. 82, and *Benzoline Motor Fuel Co.* v. *Bollinger*, 353 Ill. 600, cited by petitioners (Br. 34), were suits brought by gasoline dealers to recover taxes on sales of gasoline which had been collected by the State of Illinois under an unconstitutional statute. Recovery was denied in the *Standard Oil Company* case because the company had collected the tax directly from its customers and therefore had suffered no injury. That case might suggest a possible defense if the present suit had been brought by Santo Tomas Gin Company. But it certainly does not hold that the purchasers in that case, or the petitioners under circumstances involved here, could recover. In the *Benzoline Motor Fuel Company* case recovery was allowed because the company had previously contracted with its customers to repay

the tax to them if the Act were held invalid. The court held that the company was the proper party to sue on behalf of its customers. Under similar circumstances the Santo Tomas Gin Company might have successfully prosecuted this action for the benefit of petitioners, but the case is not authority for the maintenance of this action by petitioners.

D. A PROPER ADMINISTRATION OF THE REVENUE LAWS REQUIRES THAT PETITIONERS BE DENIED RECOVERY.

1. The administration of the revenue laws has roots which go back to the beginning of our nation. In the course of its development there has emerged "a complete system of corrective justice in regard to all taxes imposed by the general government." *State Railroad Tax Cases*, 92 U. S. 575, 613. This system of corrective justice has been bottomed upon the assumption that the Government, in collecting illegal taxes, is answerable only to the taxpayer.

The Treasury Department receives returns from the taxpayer. Its assessments are directed only to the taxpayer. Payments are credited to the account of the taxpayer. Administrative processes would necessarily be disrupted if the Commissioner were to be faced with a demand for the repayment of taxes by one against whom he had made no assessment, and if the Collector were to be held liable for the recovery of taxes by one from

whom he had not collected. Orderly government requires that the Treasury not be forced to accept arrangements independently made between private persons, or be held accountable for tax collections by one from whom the tax was not collected.

2. The dangerous implications of such a rule are illustrated by the fact that, at the time this suit was filed and when it was decided by the court below, there was no assurance that the Government might not be faced with two suits for recovery of a single tax, and no assurance that—if the producer were allowed to recover—the ginner might not also recover the amount of the same tax.

The ginner is not a party to the suit of the producer and would not seem to be bound or estopped by any recovery of the producer. If a timely claim for refund had been filed by the ginner as well as the producer, there would thus have been a serious danger that the ginner as well as the producer could recover.

In several recent cases the Government has sought to defend against recovery by the club or ticket seller of taxes paid on dues or admissions on the ground that in reality the suit was brought not by the taxpayer but by a mere collecting agency. Almost without exception, however, the courts have rejected this contention. Two of the leading cases on this point are *Builders' Club of Chicago* v. *United States,* 14 F. Supp. 1020 (C. Cls.), and *Alliance Country Club* v. *United States,* 62 C. Cls.

509. In both of these cases the money used to pay the taxes was furnished by individual members of the clubs. The clubs, however, were required by statute to collect the money and turn it over to the Collector of Internal Revenue. The Government therefore argued, as the petitioners argue here, that the taxes had actually been paid by individual members of the respective organizations and the clubs could not maintain an action for a refund without express authorization of their members. The court held, however, that the persons made liable by the Act to pay over to the Collector the taxes imposed were the real taxpayers. And in *United States* v. *Johnston*, 268 U. S. 220, 227, it was held that the collecting agent for admissions tax could not be indicted for embezzlement because it "does not look as if the Government were dealing with these people otherwise than with others answerable for a tax." Whatever the soundness of the club dues cases,[4] it is to be noted that, unlike them, suit by a ginner to recover taxes paid under the Bankhead Cotton Act could not be defended upon the ground that the ginner had no personal liability and was merely a tax collector. Therefore the reasoning which permitted the clubs to recover merely because they were required to account for the money collected from members would apply *a fortiori* to a ginner.

[4] Compare *Allen* v. *Regents*, 304 U. S. 439, where the Court seems to imply that the collecting agent is not entitled to maintain a suit for refund. But the present statute clearly does not treat the ginner as a mere collecting agent.

While the Government might have a valid defense to a suit by the ginner, based upon the fact that the burden of the tax was shifted, it is not settled that recovery will be denied in the absence of a statute requiring proof that the burden of the tax has not been passed on. Compare *United States* v. *Jefferson Electric Co.*, 291 U. S. 386; *Anniston Mfg. Co.* v. *Davis*, 301 U. S. 337; *Southern Pac. Co.* v. *Darnell-Taenzer Co.*, 245 U. S. 531. Petitioners are therefore not in a position to assert with any confidence that they alone are entitled to recover.

The Government plainly should not be required to litigate at its peril its liability both to the ginner and to its customer whom the ginner has induced to discharge its tax liability. Only by confining to the taxpayer the right to secure refund of illegal taxes can orderly administration of the revenue laws be preserved.

3. Petitioners assert (Br. 26) that they are entitled in justice and good conscience to the return of the tax because they bore the burden of it. This factor, at least where the amount of the tax was included as a separate item as seems the case here, would entitle them to recover from the Gin Company in the event of a refund to it. *Wayne County Produce Co.* v. *Duffy-Mott Co.*, 244 N. Y. 351; compare *Heckman & Co.* v. *Dawes & Son Co.*, 12 F. (2d) 154; *Casey Jones, Inc.* v. *Texas Textile Mills*, 87 F. (2d) 454; *Abe Cohen* v. *Swift & Co.*,

95 F. (2d) 131 (C. C. A. 7th), certiorari denied, No. 879, October Term, 1937. But whatever the extent to which the economic burden of the tax is shifted, "the tax is laid and remains on the manufacturer and on him alone." *Lash's Products Co.* v. *United States*, 278 U. S. 175, 176. There is, accordingly, nothing which would permit the petitioners to give themselves the standing of taxpayer and to hold the Government accountable for the result of transactions between them and the ginner.

So far as the broader equities are material, it may be noted that petitioners received the benefit of higher prices, obtained through crop reduction by their competitors, without reducing their own production. It may well be that they were fully compensated for the amount of the tax burden which they bore when they received the higher prices for their cotton.

II

CONGRESS HAS RECOGNIZED THE PRODUCERS' INCAPACITY TO RECOVER AND HAS PROVIDED RELIEF

Since the decision in *United States* v. *Butler*, 297 U. S. 1, Congress has attempted to remedy the maladjustments caused by invalidation of taxes collected under the Agricultural Adjustment Act and the repeal of related acts, one of which is the Bankhead Cotton Act. The Bankhead Cotton Act, the Kerr-Smith Tobacco Act (48 Stat. 1275), and

the Potato Act of 1935 (49 Stat. 782) were promptly repealed (c. 42, 49 Stat. 1106), and collection of unpaid taxes due under those Acts was prohibited (c. 112, 49 Stat. 1155). Provision was made in Title VII of the Revenue Act of 1936 (c. 690, 49 Stat. 1648) for refund of processing, floor stocks, and compensating taxes imposed under the Agricultural Adjustment Act, to the extent that the burden of such taxes had been borne by the taxpayers. Further provision was made in Title IV of the same Act for refunds to purchasers who held processed commodities on January 6, 1936, the date of the decision in the *Butler* case, which they had purchased at a price which included processing taxes. See *Anniston Mfg. Co.* v. *Davis*, 301 U. S. 337. At the same time, in order to do complete justice, Congress included Title III in the Revenue Act of 1936, which imposed a substantial tax upon processors and others who had successfully avoided payment of processing and other similar taxes.

In keeping with this policy of affording general equitable relief from taxes collected under the Agricultural Adjustment Act and related legislation Congress included a provision in the Second Deficiency Appropriation Act of 1938 (*infra*, p. 37), approved June 25, 1938, authorizing refund of amounts collected as tax under the Bankhead Cotton Act, the Kerr-Smith Tobacco Act, and the Potato Act of 1935. In so far as taxes collected under the Bankhead Cotton Act are concerned, it is clear that Congress fully appreciated the inequi-

this position in which growers of cotton are placed, and steps were taken to remedy that situation. The Act provides that in so far as taxes collected under the Bankhead Cotton Act are concerned "refund shall be allowed to the ginner of the cotton only to the extent that the ginner has not shifted the burden of the tax by including it in any charge or fee for ginning, or by collecting it from the owner or owners of the cotton ginned, or in any manner whatsoever," and that refund "shall be allowed to the owner or owners of the cotton at the time of ginning, to the extent that the amount of tax was shifted to such owner or owners by the cotton ginner and was not shifted by such owner or owners to other persons, and in such cases, but only for the purposes of this paragraph, the tax shall be considered to have been paid by the ginner to the United States for the account of such owner or owners."

The Act is significant in two respects. In the first place, it removes the basis for petitioners' plea that equity and good conscience require that they recover in this action. The petitioners seem clearly to have borne the burden of the tax and thus to fall within the terms of the Act.[1] See Treasury

[1] The Treasury Department has so advised this Department, which then so advised counsel for petitioners, suggesting that they dismiss the petition in this case. Counsel replied that this action was considered inadvisable because there could be no recovery of interest under the Act of June 25, 1938.

Decision 4850, *infra*, published in the Internal Revenue Bulletin, August 15, 1938. Except for the recovery of interest upon the amounts paid in discharge of the ginner's taxes, upon which petitioners have no right to insist (*Smyth* v. *United States*, 302 U. S. 329, 353), they can have under the Act of June 25, 1938, all that they seek to recover here. Under the circumstances there are no equitable considerations which would justify limiting the settled rule that a volunteer cannot maintain a suit for refund, or accept petitioners' theory that they paid the amount involved under protest or duress.

In the second place, the Act makes plain the understanding of Congress that without this remedial legislation the producer would be unable to recover taxes collected from the ginner under the Bankhead Cotton Act. Its provisions for the refund to the producers are:

> * * * refund shall be allowed to the owner or owners of the cotton at the time of ginning, to the extent that the amount of tax was shifted to such owner or owners by the cotton ginner and was not shifted by such owner or owners to other persons, *and in such cases, but only for the purposes of this paragraph, the tax shall be considered to have been paid by the ginner to the United States for the account of such owner or owners.* [Italics added.]

This shows not only that Congress considered remedial legislation necessary in order to provide for recovery by the producer, but that in providing

remedy it was considered necessary to provide that "the tax shall be considered to have been paid by the ginner to the United States for the account of such owner or owners." Clearer evidence could not be had that Congress viewed its statutes as allowing recovery only by the taxpayer, and that, when this principle was departed from, it was to be done only by enacting a retroactive fiction that the tax was originally imposed on the producer.*

CONCLUSION

In view of the foregoing we respectfully submit that the decision below should be affirmed.

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OCTOBER 1938.

*The other possible effects of the Second Deficiency Appropriation Act upon this case, such as operating to prevent the complaint from stating a cause of action or perhaps to oust the courts of jurisdiction, are not included in the question to which the order granting the writ was limited and to which petitioners have devoted their brief. We assume, therefore, that any decision of reversal would result in a remand of the case for further proceedings.

APPENDIX

Bankhead Cotton Act, c. 157, 48 Stat. 598 (U. S. C., Title 7, c. 27):

* * * * *

TAX AND EXEMPTIONS

SEC. 4. (a) There is hereby levied and assessed on the ginning of cotton hereafter harvested during a crop year with respect to which this Act is in effect, a tax at the rate per pound of the lint cotton produced from ginning, of 50 per centum of the average central market price per pound of lint cotton, but in no event less than 5 cents per pound. If the cotton was harvested during a crop year with respect to which the tax is in effect, the tax shall apply even if the ginning occurs after the expiration of such crop year.

(b) The average central market price, per pound of lint cotton, shall be the average price per pound of basis seven-eighths-inch middling spot cotton on the ten spot cotton markets (designated by the Secretary of Agriculture) as determined and proclaimed from time to time by the Secretary of Agriculture. The average central market price determined and proclaimed shall be the base for determining the rate of the tax until a different average central market price for lint cotton is determined and proclaimed by the Secretary of Agriculture.

(c) Every person ginning any cotton subject to tax under this Act (whether as agent

of the owner or otherwise) and every other person liable for tax under this Act shall make monthly returns under oath in duplicate and pay the taxes imposed by this Act to the collector for the district in which the ginning is done, or to such other person as such collector may direct. Such returns shall contain such information and be made at such times and in such manner as the Commissioner, with the approval of the Secretary of the Treasury, may by regulations prescribe. The tax shall, without assessment by the Commissioner or notice from the collector, be due and payable to the collector at the time so fixed for filing the return. If the tax is not paid when due, there shall be added as part of the tax interest at the rate of 1 per centum a month from the time when the tax became due until paid.

(d) When the Secretary of Agriculture does not proclaim an allotment of cotton for a crop year as provided in section 3 of this Act, the tax shall not apply with respect to cotton harvested during such crop year but shall apply to cotton harvested during the next crop year for which, with the approval of the President, the Secretary makes an allotment under such section.

(e) No tax shall be imposed under this Act with respect to—

(1) Cotton harvested by any publicly owned experimental station or agricultural laboratory.

(2) An amount of cotton harvested in any crop year from each farm equal to its allotment.

(3) Cotton harvested prior to the crop year 1934–1935.

(4) Cotton having a staple of one and one half inches in length or longer.

(f) The tax shall not be collected upon the ginning of cotton which is to be stored by the producer thereof either on the farm or at such other place as may be permitted by regulations prescribed by the Secretary of Agriculture and the Secretary of the Treasury. In such cases, the payment of the tax shall be postponed, but shall be paid at the time when bale tags are secured for such cotton. Bale tags may be secured for any of such cotton at any time after ginning (1) upon the payment to such person as the Commissioner may direct, of the amount of tax which would have been payable at the time of ginning, or (2) upon the surrender of certificates of exemption covering an amount of cotton not less than the amount of such cotton. Until bale tags are secured for such cotton, such cotton shall be subject to a lien in favor of the United States for the amount of the tax payable with respect to the ginning of such cotton. The right to postponement of the payment of the tax under this subsection shall be established in accordance with such regulations as the Secretary of Agriculture and the Secretary of the Treasury may prescribe. The Commissioner, with the approval of the Secretary of the Treasury, shall prescribe regulations providing for stamping the containers of such cotton so as to indicate the time of ginning and the amount of tax payable with respect thereto.

(g) The right to exemption under paragraph (2) of subsection (e) shall be evidenced by a certificate of exemption issued as herein provided, which certificate of exemption shall be conclusive proof of the right to such exemption.

* * * * *

REGULATIONS BY THE COMMISSIONER

SEC. 12. The Commissioner, with the approval of the Secretary of the Treasury, shall prescribe (a) regulations with respect to the time and manner of applying for, issuing, affixing, and destroying bale tags, and the method of accounting for receipts from the sale of and for the use of such bale tags, and (b) such other regulations as he shall deem necessary for the enforcement of the taxing provisions of this Act.

INFORMATION RETURNS

SEC. 13. (a) All persons, in whatever capacity acting, including producers, ginners, processors of cotton, and common carriers, having information with respect to cotton produced, may be required to make a return in regard thereto, setting forth the amount of cotton delivered, the name and address of the person who delivered said cotton, the amount of lint cotton produced therefrom, and any other and further information which the Commissioner, with the approval of the Secretary of the Treasury and the Secretary of Agriculture, shall by regulations prescribe as necessary for the proper administration of the tax. Any person required to make such return shall render a true and accurate return to the Commissioner.

(b) Any person willfully failing or refusing to file such a return, or filing a willfully false return, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not more than $1,000 or by imprisonment not exceeding one year, or both.

SEC. 14. (a) All provisions of law, including penalties, applicable with respect to the taxes imposed by section 800 of the Revenue Act of 1926, shall, insofar as applicable and not inconsistent with the provisions of this Act, be applicable with respect to taxes imposed by this Act.

(b) Except as may be permitted by regulations prescribed by the Commissioner, with the approval of the Secretary of the Treasury, with due regard for the protection of the revenue, no person shall: (1) Transport, except for storing or warehousing, under the provisions of section 4 (f) beyond the boundaries of the county where produced any lint cotton to which a bale tag issued under this Act is not attached; or (2) sell, purchase, or open any bale of lint cotton to which a bale tag issued under this Act is not attached.

(c) No seed cotton harvested during a crop year with respect to which the tax is in effect shall be exported from the United States or any possession thereof to which this Act applies to any possession of the United States to which this Act does not apply or to any foreign country.

(d) Any person who willfully violates any provision of this Act, or who willfully fails to pay, when due, any tax imposed under this Act, or who, with intent to defraud, falsely makes, forges, alters, or counterfeits any bale tag or certificate of exemption made or used under this Act, or who uses, sells, or has in his possession any such forged, altered, or counterfeited bale tag or certificate of exemption, or any plate or die used, or which may be used in the manufacture thereof, or

has in his possession any bale tag which should have been destroyed as required by this Act, or who makes, uses, sells, or has in his possession any paper in imitation of the paper used in the manufacture of any such bale tag or certificate of exemption, or who reuses any bale tag required to be destroyed by this Act, or who places any cotton in any bale which has been filled and stamped, tagged, or otherwise identified under this Act, without destroying the bale tag previously affixed to such bale, or who affixes any bale tag issued under this Act to any bale of lint cotton on which any tax due is unpaid, or who makes any false statement in any application for bale tags or certificates of exemption under this Act, or who has in his possession any such bale tags or certificates of exemption obtained by him otherwise than as provided in this Act, shall on conviction be punished by a fine not exceeding $1,000, or by imprisonment for not exceeding 6 months, or both.

(e) Any person who willfully violates any regulation issued by the Secretary of Agriculture or the Secretary of Agriculture and the Secretary of the Treasury under this Act, for the violation of which a special penalty is not provided, shall, on conviction thereof, be punished by a fine not exceeding $200.

COLLECTION OF TAXES

SEC. 19. The taxes provided for by this Act shall be collected by the Commissioner of Internal Revenue under the direction of the Secretary of the Treasury. Taxes collected shall be paid into the Treasury of the United States.

REFUNDS

SEC. 20. (a) No refund of any tax, penalty, or sum of money paid shall be allowed under this Act unless claim therefor is presented within six months after the date of payment of such tax, penalty, or sum.

(b) No suit or proceeding shall be maintained in any court for the recovery of any tax under this Act alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected until a claim for refund or credit has been duly filed with the Commissioner of Internal Revenue, according to the provisions of law in that regard, and the regulations of the Secretary of the Treasury, established in pursuance thereof; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress. No suit or proceeding shall be begun before the expiration of six months from the date of filing such claim, unless the Commissioner renders a decision therein within that time, nor after the expiration of two years from the date of the payment of such tax, penalty, or sum, unless such suit or proceeding is begun within two years after the disallowance of the part of such claim to which such suit or proceeding relates. The Commissioner shall, within ninety days after any such disallowance, notify the taxpayer thereof by registered mail.

Revised Statutes:

SEC. 3220. [As amended by Sec. 1111 of the Revenue Act of 1926, c. 27, 44 Stat. 9,

and Sec. 619 of the Revenue Act of 1928, c. 852, 45 Stat. 791.] Except as otherwise provided by law in the case of income, war-profits, excess-profits, estate, and gift taxes the Commissioner of Internal Revenue, subject to regulations prescribed by the Secretary of the Treasury, is authorized to remit, refund, and pay back all taxes erroneously or illegally assessed or collected, all penalties collected without authority, and all taxes that appear to be unjustly assessed or excessive in amount, or in any manner wrongfully collected; also to repay to any collector or deputy collector the full amount of such sum of money as may be recovered against him in any court, for any internal-revenue taxes collected by him, with the cost and expenses of suit; also all damages and costs recovered against any assessor, assistant assessor, collector, deputy collector, agent, or inspector, in any suit brought against him by reason of anything done in the due performance of his official duty, and shall make report to Congress at the beginning of each regular session of Congress of all transactions under this section. (U.S.C., Title 26, Sec. 1670.)

Second Deficiency Appropriation Act of 1938, Public, No. 723, 75th Congress, 3d Session:

AN ACT Making appropriations to supply deficiencies in certain appropriations for the fiscal year ending June 30, 1938, and for prior fiscal years, to provide supplemental appropriations for the fiscal years ending June 30, 1938, and June 30, 1939, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the following sums are appropriated, out of any money in the Treasury not otherwise appropriated, to supply deficiencies in certain

appropriations for the fiscal year ending June 30, 1938, and for prior fiscal years, to provide supplemental appropriations for the fiscal years ending June 30, 1938, and June 30, 1939, and for other purposes, namely:

* * * * *

Refunds and payments of processing and related taxes: For refunds and payments of processing and related taxes as authorized by titles IV and VII, Revenue Act of 1936, for refunds of taxes erroneously, illegally, or otherwise wrongfully collected, under the Cotton Act of April 21, 1934, as amended (48 Stat. 598), the Tobacco Act of June 28, 1934, as amended (48 Stat. 1275), and the Potato Act of August 24, 1935 (49 Stat. 782); and for redemption of tax stamps purchased under the aforesaid Tobacco and Potato Acts, fiscal year 1939, $50,000,000, together with the unexpended balance of the funds made available to the Treasury Department for these purposes for the fiscal year 1938 by the Second Deficiency Appropriation Act, fiscal year 1937.

For the refunding, which is hereby authorized, in accordance with rules and regulations to be prescribed by the Commissioner of Internal Revenue with the approval of the Secretary of the Treasury, of all amounts collected by any collector of internal revenue as tax (including penalties and interest) under the Bankhead Cotton Act of 1934 (48 Stat. 598), as amended, the Kerr Tobacco Act (48 Stat. 1275), as amended, and the Potato Act of 1935 (49 Stat. 750), fiscal year 1939, so much of the appropriation in the immediately preceding paragraph as may be requisite is hereby made available for the purposes of and in accordance with the provisions of this paragraph: *Provided*, That no

refund shall be made or allowed of any amount paid by or collected from any person as tax under such Acts, unless, after the date of the enactment of this Act, and prior to July 1, 1939, a claim for refund has been filed by such person: *Provided further,* That no refund shall be denied upon the ground that a proceeding to recover had become barred by the limitation provisions of such Acts, or by the provisions of section 3226, as amended, of the Revised Statutes, or by the provisions of section 608 of the Revenue Act of 1928: *Provided further,* That in the absence of fraud all findings of fact and conclusions of law of the Commissioner of Internal Revenue upon the merits of any such claim for refund, and the mathematical calculations made in connection therewith, shall not be subject to review by any court or by any other officer, employee, or agent of the United States: *Provided further,* That no refund of any tax shall be made under this paragraph unless liability for the payment of such tax was satisfied by the payment of money: *Provided further,* That no interest shall be allowed in connection with any refund made under the authority of this paragraph: *Provided further,* That in the case of amounts paid as tax under the Bankhead Cotton Act of 1934 with respect to the ginning of cotton (a) refund shall be allowed to the ginner of the cotton only to the extent that the ginner has not shifted the burden of the tax by including it in any charge or fee for ginning, or by collecting it from the owner or owners of the cotton ginned, or in any manner whatsoever, and (b) refund shall be allowed to the owner or owners of the cotton at the time of ginning, to the extent that the amount of tax was shifted to

such owner or owners by the cotton ginner and was not shifted by such owner or owners to other persons, and in such cases, but only for the purposes of this paragraph, the tax shall be considered to have been paid by the ginner to the United States for the account of such owner or owners. No part of the amount of any refund made under this paragraph in excess of 10 per centum of the amount of such refund shall be paid or delivered to or received by any agent or attorney on account of services rendered in connection with such refund, and the same shall be unlawful, any contract to the contrary notwithstanding; and any person violating the provisions of this sentence shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not exceeding $1,000.

Treasury Regulations 84 (1935 Edition):

ART. 5. *Measure of the tax.*—The measure of the tax is the number of pounds of lint cotton resulting from the ginning of seed cotton. The actual weight, or an average representative of the actual weight, of bagging and ties may be deducted as tare in computing the number of pounds of lint cotton resulting from the ginning of seed cotton.

ART. 6. *Rate of tax.*—The rate of tax on the ginning of cotton is 50 per cent of the average central market price per pound of lint cotton, but in no event less than 5 cents per pound. Such average central market price will be determined by the Secretary of Agriculture, and thereafter such rate will be announced by the Commissioner. If the rate is changed, the new rate and the effective date thereof will be announced by the Commissioner.

ART. 7. *When tax attaches.*—The tax attaches upon the ginning of the cotton.

ART. 8. *Liability for the tax.*—Liability for the tax attaches to the ginner immediately upon the ginning of cotton, except that where payment of the tax is postponed as provided for in article 13, liability for the tax attaches to the producer. (See article 21.)

ART. 9. *Exemption from the tax on ginning.*—(a) The ginning of cotton harvested during the effective period shall be exempt from the tax to the extent that any cotton so ginned is covered by tax-exemption certificates. Cotton tax-exemption certificates are issued to producers of cotton by the Secretary of Agriculture. At the time of ginning, the ginner shall detach coupons from the producer's cotton tax-exemption certificate in an amount sufficient to cover (to the nearest 5 pounds) the amount of lint cotton ginned and contained in each bale or other package. A cotton tax-exemption certificate presented to a ginner which does not bear the name of the person presenting it, or is not presented by the agent of the person whose name appears thereon, shall not be accepted by the ginner nor shall a ginner accept a detached portion of a cotton tax-exemption certificate except in cases where seed cotton has been sold by the producer and the detached portion presented has on the reverse side thereof or paper attached thereto the following statement signed by the producer:

"To cover _____ pounds of seed cotton sold to: _____ by _____."
(Name of purchaser) (Signature of producer.)

Any cotton tax-exemption certificates acquired by a ginner in any manner other than that prescribed above will not be accepted

by the collector of internal revenue as evidence of exemption from tax.

(b) The ginning of cotton harvested prior to June 1, 1934, is exempt from the tax. To be entitled to such exemption, the ginner shall procure an affidavit from the person who owns the cotton at the time of ginning. The affidavit shall be executed on G. T. Form 106–B, revised, and shall show (1) the name and address of the owner of the cotton, together with the name and address of the producer, if they are different persons, (2) the location of the farm on which the cotton was harvested, (3) the year in which the cotton was harvested, (4) the location of the building where the seed cotton has been stored, (5) the number of bales of lint cotton resulting from the ginning with the quantity, in pounds, of each bale, and (6) that a bale tag has been attached to each bale.

(c) The ginning of cotton harvested by a publicly owned experimental station or agricultural laboratory is exempt from the tax. To be entitled to such exemption, the ginner shall procure an affidavit signed by a responsible executive officer of such station or laboratory. The affidavit shall be executed on G. T. Form 106–C, revised, and shall show (1) the name and address of such station or laboratory, (2) the location of the land on which the cotton was harvested, (3) the number of bales of lint cotton resulting from the ginning with the quantity, in pounds, of each bale, and (4) that a bale tag has been attached to each bale.

(d) The ginning of cotton having a staple of 1½ inches in length or longer is exempt from the tax. To be entitled to this exemption, the ginner and the person who owns the cotton at the time of ginning, shall each

execute an affidavit on G. T. Form 106–D, revised, which shall state: (1) The location of the farm on which the cotton was produced, (2) the date the cotton was ginned, (3) that the cotton has a staple 1½ inches in length or longer, (4) the number of bales of lint cotton resulting from the ginning with the quantity, in pounds, of each bale, and (5) that a bale tag has been attached to each bale.

(e) There must be filed with each return on which exemption from tax is claimed under (a), (b), (c), or (d), above, the required affidavit or affidavits, certificate or certificates, as the case may be.

ART. 11. *Returns of ginners.*—Every ginner shall make a return, in duplicate, of all cotton ginned during each calendar month. A separate return, in duplicate, shall be made for each plant where cotton is ginned. The return shall show with respect to each bale or other quantity of cotton ginned during the month the same data required to be kept in the ginner's record as provided in article 10, and shall account for every bale tag, for every certificate of tagging on G. T. Form 104, revised, and for every lien card on G. T. Form 105, revised, issued to the ginner by the collector as provided in articles 20 and 13. The return on G. T. Form 103, revised, which may be obtained from any collector, shall be filled out in accordance with the instructions contained thereon and in accordance with these regulations. Both the original and the duplicate shall be signed and sworn to before an officer authorized to administer oaths, by the ginner, if an individual, or, in other cases, by an executive officer of the concern. The return (including both original and duplicate)

properly filled out, signed, and sworn to shall be filed with the collector for the district within which the place of ginning is situated. The original return shall have securely attached thereto each cotton tax-exemption certificate surrendered by the producer with respect to cotton ginned during the month, and all affidavits required by articles 9 and 13, and together with the duplicate return shall be filed on or before the last day of the month following the month for which the return is made. The ginner shall tender, with his return to the collector, a remittance to cover the amount of tax due on the ginning of all cotton during the month other than that with respect to which exemption certificates are surrendered, or affidavits are filed.

If the last day of the month on which the return is due falls on Sunday or a legal holiday, the return may be filed on the next following business day.

A return must be filed with the collector for each month whether or not tax liability has been incurred for that month.

If a ginner ceases business, his last return must be marked "final return."

ART. 12. *Payment of ginning tax.*—The tax shall, without assessment by the Commissioner or notice from the collector, be due and payable to the collector at the time fixed for filing the return.

ART. 13. *Postponement of time of payment.*—(a) If a producer intends to store lint cotton resulting from a ginning of cotton produced by him, either on his farm or at such other place as provided for in (b), below, the tax shall not be collected upon the ginning of such cotton, but payment may be postponed until the time fixed for the producer to file his return covering such cotton.

(See article 21.) Until such return is filed and the tax is paid or exemption certificates covering the cotton are surrendered, the cotton in such bales shall be subject to a lien in favor of the United States for the amount of tax payable with respect to the ginning of such cotton. This lien shall be prior to all other liens, claims, or demands of any nature whatsoever.

The ginner who gins such cotton shall obtain from the producer an affidavit, executed in triplicate, on G. T. Form 106–A, revised, showing (1) the ginner's name, (2) the name and address of the producer, (3) the place where the cotton was produced, (4) the date on which the cotton was ginned, (5) the place where the lint cotton is to be stored, (6) the number of bales of lint cotton and the weight of lint cotton contained in each bale, and (7) the serial number of the lien card attached to each bale. One copy of this affidavit shall be attached to the return filed for the month within which the ginning was done, one copy shall be retained by the ginner, and the third copy shall be retained by the producer.

The ginner shall attach to each such bale of lint cotton a lien card on G. T. Form 105, revised, bearing a serial number, which shall be filled out in accordance with the instructions contained thereon. This card shall show the time of ginning, the weight of lint cotton contained in the bale, and the amount of tax due. The lien card will contain a statement to the effect (1) that the cotton is subject to a lien in favor of the United States for the amount of tax payable with respect to the ginning of such cotton, and (2) that any person who transports (except

to the place of storage), sells, purchases, or opens this bale of cotton before a bale tag issued under the Act is attached thereto is liable to a fine not exceeding $1,000, or to imprisonment for not exceeding six months, or both. Such lien card shall not be removed from the bale until a bale tag has been procured and attached thereto. Lien cards may be obtained from any collector. For provisions relating to filing of returns by producers and payment of tax, see article 21.

(b) *Conditions under which untagged cotton may be stored elsewhere than on the farm on which produced.*—In any case where the producer of lint cotton harvested and ginned after May 31, 1934, desires to store one or more bales of such cotton elsewhere than on the farm on which it was produced, without at the time of ginning procuring bale tags therefor, and he has at such time no tax-exemption certificate with which to procure bale tags, he may store such cotton subject to the following conditions:

(1) Such cotton may be stored only in an approved warehouse (see article 2 (q)) located either within or without the county and state in which the cotton was produced;

(2) All such cotton of a producer shall be stored in one approved warehouse selected by the producer;

(3) The requirements of (a) above shall be fully complied with by the producer and the ginner who ginned such cotton;

(4) Both the affidavit and the lien card required by paragraph (a) above shall show the name and location of the warehouse in which the cotton is to be stored;

(5) No bale so stored shall be sold or removed from such approved warehouse for any purpose until a bale tag has been attached to such bale; and

(6) All bales so stored shall be segregated in such warehouse from all bales to which tags are attached.

ART. 16. *Transportation, purchase, or sale of lint cotton.*—No person shall transport or cause to be transported after July 1, 1934, any lint cotton to which a bale tag is issued under the Act is not attached except (a) within the boundaries of the county where produced; (b) for the purpose of storage by the producer, in accordance with article 13; (c) a bale imported and held in customs custody or control (see article 22); (d) for export if the bale tags have been removed as provided in article 30; (e) in the form of bona fide samples in small containers; (f) after it has been put in process.

No person shall purchase or sell a bale of lint cotton unless there is attached thereto a bale tag issued under the Act, and unless the seller of the cotton delivers to the purchaser at the time of the sale a certificate of tagging, G. T. Form 104, revised; provided, however, that warehouse receipts for bales of lint cotton harvested and ginned prior to June 1, 1934, and stored in a warehouse on August 1, 1934, may be purchased and sold if the warehouseman has executed the bond required by the regulations of the Secretary of Agriculture (R. 21, B. A. R. Series No. 1) and has in his possession bale tags and certificates of tagging for the cotton represented by the warehouse receipt or receipts. A bale tag shall be attached to, and a certificate of tagging issued for, each such bale of cotton before it is removed from the warehouse.

No person shall open or break a bale of lint cotton that does not have attached thereto a bale tag issued under the Act, and

for which the owner does not have in his possession a certificate of tagging, unless such lint cotton was, on July 1, 1934, held by the owner on the premises where the cotton is to be processed, and the bale is opened on such premises.

For provisions relating to penalties, see article 37.

ART. 21. *Returns of producers.*—Every producer who has had cotton returned to be stored by him in accordance with the provisions contained in article 13 shall, at least 15 days prior to transporting, selling, or opening any bale of such cotton, file a return on G. T. Form 107, revised.

The return (including both original and duplicate), properly filled out, signed, and sworn to, shall be filed with the collector of internal revenue for the district in which the cotton was ginned. The return shall state the place where the cotton is stored, the number of bales of cotton for which bale tags are desired, and the total weight of lint cotton contained in each bale. There shall accompany the return that duplicate copy of the producer's affidavit which was retained by such producer at the time the cotton was ginned. (See article 13.) If the producer desires bale tags for only a portion of the cotton covered by such affidavit, the return shall cover only such portion, and the collector shall make proper notation on the affidavit and return it to the producer. The affidavit shall be forwarded to the collector each time a return is filed with respect to any part of the cotton covered by such affidavit. When a return or returns have been filed for the total quantity of cotton covered by such affidavit, the collector shall retain the affidavit.

At the time of filing the return, the producer may surrender exemption certificates covering any part of the cotton covered by the return, and shall pay the tax on any part of such cotton not covered by such exemption certificates. Bale tags will thereupon be issued to such producer to identify the bales of lint cotton covered in the return. Each tag when received should be attached to the bale of lint cotton for which it is issued. At the time such bale tags are issued to the producer, certificates of tagging, one for each bale tag, shall be issued by the collector to the producer, who shall be notified by the collector that without such certificate and tag the bale of lint cotton can not be sold or broken or opened. (See article 16.)

The collector shall keep an accurate record of bale tags and certificates of tagging issued under this article, together with the serial numbers of such certificates.

Treasury Decision 4850, approved August 8, 1938 (Internal Revenue Bulletin, August 15, 1938, page 15):

Pursuant to the above-quoted provision of law, the following regulations are hereby prescribed:

ARTICLE 1. *General.*—(a) Refund under the above-quoted provision of law will be allowed, to the person entitled thereto, of all amounts collected as tax, penalty, or interest by any internal revenue collector under the provisions of the Bankhead Cotton Act of 1934, as amended, the Kerr Tobacco Act, as amended, and the Potato Act of 1935. Refund will be allowed only to the extent that the tax, penalty, or interest was paid in money. Satisfaction of tax liability by the surrender or use of tax exemption certifi-

cates, tax payment warrants, or tax exemption stamps is not considered payment of tax in money.

(b) No refund will be denied upon the ground that a proceeding to recover had become barred by the limitation provisions of the Bankhead Cotton Act of 1934, as amended, the Kerr Tobacco Act, as amended, or the Potato Act of 1935, or by the provisions of section 3226, as amended, of the Revised Statutes, or by the provisions of section 608 of the Revenue Act of 1928, provided the person entitled to such refund files a claim in accordance with the provision of law quoted above and these regulations and within the period of limitations prescribed.

ART. 2. (a) *Claim Forms Prescribed—Where to File.*—Claims for refund of amounts paid as tax, penalty, or interest under the Bankhead Cotton Act of 1934, as amended, shall be filed on G. T. Form 111. Claims for refund of amounts paid as tax, penalty, or interest under the Kerr Tobacco Act, as amended, shall be filed on T. A. Form 116. Claims for refund of amounts paid as tax, penalty, or interest under the Potato Act of 1935 shall be filed on Form 843. Such claims shall be prepared in accordance with the instructions contained on the forms and in accordance with the provisions of these regulations. Claims shall be filed with the collector of internal revenue for the district in which the tax was paid. Where the tax was paid by means of stamps, the collection district in which the tax was paid shall be the district in which the sale of the tobacco or potatoes took place and in which a report of the sale was filed with the collector of internal revenue.

(b) *Certificate as to Agent's or Attorney's Fees—Where to file.*—The claimant shall

file with the collector of internal revenue for the district in which his claim of refund is filed a certificate as to attorney's or agent's fees on Form No. 971. This certificate shall be made in accordance with the instructions on the reverse side thereof. Form No. 971 reads as follows:

[Form No. 971

Certificate as to Attorney's or Agent's Fees]

_____, 193_

The Second Deficiency Appropriation Act, fiscal year 1938, approved June 25, 1938, provides in part:

"For the refunding * * * in accordance with rules and regulations to be prescribed by the Commissioner of Internal Revenue with the approval of the Secretary of the Treasury, of * * * amounts collected * * * under the Bankhead Cotton Act of 1934 * * *, the Kerr Tobacco Act * * *, and the Potato Act of 1935 * * *: Provided, * * *. *No part of the amount of any refund made under this paragraph in excess of 10 per centum of the amount of such refund shall be paid or delivered to or received by any agent or attorney on account of services rendered in connection with such refund, and the same shall be unlawful, any contract to the contrary notwithstanding; and any person violating the provisions of this sentence shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not exceeding $1,000.*"

In filing the claim for refund of $_____, under the paragraph of the Second Deficiency Appropriation Act, fiscal year 1938, partly quoted above, the undersigned hereby

certifies that all the following statements are true, to the best of his/its knowledge, intention, and belief:

(1) The undersigned has read the portion of the statute quoted above.

(2) The undersigned has not directly or indirectly paid or delivered and will not directly or indirectly pay or deliver to any attorney or agent on account of services rendered or to be rendered in connection with such refund more than 10 per cent (one-tenth) of the amount of such refund.

(3) It is understood by the undersigned that the statute makes it unlawful for more than 10 per cent (one-tenth) of the amount of such refund to be paid or delivered to or received by such agent or attorney for such services even if he has a contract with the undersigned providing for a larger fee than 10 per cent, and that any person convicted of violating this provision is subject to a fine not exceeding $1,000.

_____
(Name of Claimant)

[CORPORATE SEAL] _____
(Address of Claimant)
(See reverse side for instructions.)

The instructions on the reverse side of Form No. 971 read as follows:

INSTRUCTIONS

1. This certificate must be read and signed in duplicate by the claimant, and the original delivered to the Collector when the claim for refund is filed, the copy being retained by the claimant.

2. If the claim for refund was filed after June 25, 1938, and prior to the time this certificate was required to be filed or the

form for it was made available to claimants, the Collector will mail this form to such claimant in duplicate, and within thirty days of the date of such mailing the claimant shall sign and deliver the original to the Collector and sign and retain the copy.

3. If the claimant is an individual or a partnership, the individual or one of the partners must personally sign the certificate unless the Collector is satisfied that this is impossible, in which event it may be signed by a duly authorized agent, and the Collector will then send a copy of the signed certificate to the claimant by registered mail.

4. If the claimant is a corporation, the certificate must be signed with the corporate name, followed by the signature and title of at least one of its responsible officers having authority to sign, or by its receiver or trustee in bankruptcy if the corporation's property or business is operated by such receiver or trustee, and the seal of the corporation must be attached.

5. If the claimant is an executor, administrator, guardian, trustee, receiver, or other fiduciary, such fiduciary shall sign the certificate and shall attach satisfactory evidence of his authority to act.

Collectors should note that under the circumstances mentioned in paragraphs 2 and 3 of the instructions, it is necessary to mail copies of the form to claimant.

ART. 3. *Period During Which Claims Must Be Filed.*—No refund shall be made or allowed of any amount paid by or collected from any person as tax under the Bankhead Cotton Act of 1934, as amended, the Kerr Tobacco Act, as amended, or the Potato Act of 1935, unless, subsequent to June 25, 1938, and prior to July 1, 1939, a

claim for refund is filed by the person entitled thereto, or his duly authorized agent or representative. In accordance with the requirements of the above-quoted provision of law, claims filed on or before June 25, 1938, may not receive favorable consideration by the Commissioner. A person who has filed, on or before June 25, 1938, a claim for refund of any such tax, penalty, or interest, must, nevertheless, to secure a refund, file a new claim on the prescribed form subsequent to June 25, 1938, and prior to July 1, 1939.

ART. 4. *Interest.*—No interest shall be allowed with respect to any refund of tax, penalty, or interest made or allowed under the above-quoted provision of law.

ART. 5. *Refund of Tax Paid Under the Bankhead Cotton Act of 1934.*—(a) Refund of amounts paid as tax, penalty, or interest under the Bankhead Cotton Act of 1934, as amended, will be allowed to the ginner of the cotton who paid the tax to the collector of internal revenue, but only to the extent that such ginner has not shifted the burden of the tax by including it in any charge or fee for ginning, by collecting it from the owner or owners of the cotton ginned or in any manner whatsoever.

(b) If the amount of tax, penalty, or interest was shifted by the ginner of the cotton to the owner or owners of the cotton at the time of ginning, then to the extent that such tax, penalty, or interest was shifted to such owner or owners, and was not shifted by them to other persons, refund will be allowed to such owner or owners. In such case the tax will be considered to have been paid by the ginner to the United States for the account of such owner or owners.

ART. 6. *Certification of Tax Payment by Collector.*—The collector of internal revenue will fill in the certificate of tax payment on the claim in cases where such certification is necessary. In the case of each claim filed on T. A. Form 116, the collector will attach to the claim the tax returns filed by the taxpayer on T. A. Form 113 and the memorandums of sale on T. A. Form 112, which are applicable to the tax payments with respect to which the claim is filed. For this purpose T. A. Form 112 may be detached from the returns on T. A. Form 111 of which they were a part. (See Articles 3, 4, and 5 of T. D. 4452, approved July 23, 1934.) The Collector will then forward the claim to the Commissioner for appropriate action.

ART. 7. *Affidavit of Person Authorized to Receive Check.*—The check in payment of the amount of the refund allowed will be drawn only in the name of the claimant. If the claimant, in connection with any such claim for refund, files, or causes to be filed, a power of attorney specifically authorizing another person to receive the check in payment of the refund, the power of attorney should be accompanied by an affidavit of such other person that, for services rendered or to be rendered in connection with the refund, he has not received and will not receive or accept, directly or indirectly, as compensation for such services, more than 10 per cent of the amount of the refund allowed.

This Treasury Decision is prescribed under the authority contained in the above-quoted provision of the Second Deficiency Appropriation Act, fiscal year 1938.

U. S. GOVERNMENT PRINTING OFFICE: 1938

SUPREME COURT OF THE UNITED STATES.

No. 12.—October Term, 1938.

O. F. Stahmann, Anna M. Stahmann and Joyce F. Stahmann, doing business as Stahmann Farms Company, Petitioners, vs. S. P. Vidal, Collector of Internal Revenue for the District of New Mexico.	On Writ of Certiorari to the United States Circuit Court of Appeals for the Tenth Circuit.

[November 7, 1938.]

Mr. Justice Roberts delivered the opinion of the Court.

We are to decide whether the petitioners may maintain an action to recover from a collector of internal revenue sums paid by them as taxes assessed under the Bankhead Cotton Act.[1]

During the crop year 1934-1935 the petitioners were engaged in growing cotton and produced a quantity in excess of the allotment for which, under the terms of the Act, they were entitled to obtain tax exemption certificates. Petitioners delivered the excess cotton to Santo Tomas Gin Company, which ginned it and filed returns with the respondent, as collector, showing a tax of some $13,000 due on the ginning. The respondent, as directed by the Act, assessed the tax against the gin company. The latter refused to deliver the cotton to the petitioners until the tax was paid; and to obtain their cotton the petitioners, in November 1934 and January 1935, paid the tax to the respondent. March 6, 1935 they presented a claim for refund, which was rejected by the Commissioner of Internal Revenue August 22, 1935. Suit was brought against the respondent May 5, 1936, to recover the amount paid with interest, the petitioners alleging that the Bankhead Act was unconstitutional. This the answer denied, and set up the further defense that, under the Act, the petitioners were not liable for the tax, any payment they had made was in discharge of a liability imposed by the Act on the gin company, and, consequently, they were not entitled to maintain the action.

[1] Act of April 21, 1934, c. 157, 48 Stat. 598.

The District Court, a jury having been waived, held that the Act was unconstitutional, that the petitioners could maintain the action, and gave judgment for them. The Circuit Court of Appeals refused to pass upon the constitutional question, as it was of opinion that the trial court erred in sustaining the petitioners' standing, and reversed the judgment.[2] On account of the importance of the case we granted certiorari, limited, however, to the question whether the petitioners were the proper parties to maintain the action.

Section 20(b) of the Bankhead Act[3] stated the conditions upon which a proceeding might be maintained for the recovery of any sum alleged to have been erroneously or illegally assessed or collected under its terms. The Act was repealed February 10, 1936,[4] prior to the institution of the instant action. The petitioners were therefore remitted for recovery of the sum demanded to R. S. 3226, as amended by the Act of June 6, 1932, Section 1103.[5] As thereby required, they timely filed a claim for refund, which was denied, and timely brought their action. Under this section it is unnecessary to plead or prove that the tax was paid under protest or its collection was accomplished by duress.

The sole question for decision is whether the petitioners voluntarily paid someone's else tax. If they did they may not maintain the action.[6]

The respondent insists that, by the terms of the Act, the tax is imposed upon the ginner and not upon the producer. The petitioners, on the other hand, point to the provisions of the Act which make the levy of the tax dependent upon the vote of cotton producers and not upon any act of the ginners; which base exemptions from the tax upon the time, manner, and character of production and not upon the time, manner, or character of ginning; which grant exemptions to producers, not to ginners; which condition exemptions upon the producers meeting certain conditions and limitations; and which fix quotas for exemptions to producers. They say

[2] 93 F. (2d) 902.

[3] 48 Stat. 606.

[4] 49 Stat. 1106.

[5] 47 Stat. 169, 286; U. S. C. Tit. 261, §§ 1672-1673.

[6] Compare Wourdack v. Becker, 55 F. (2d) 840; Clift & Goodrich v. United States, 56 F. (2d) 754; Ohio Locomotive Crane Co. v. Denman, 73 F. (2d) 408; Central Aguirre Sugar Co. v. United States, 2 F. Supp. 538; Combined Industries, Inc. v. United States, 15 F. Supp. 349.

Congress never intended the ginner should bear the tax since the Act provides that he is to be reimbursed up to twenty-five cents per bale for additional expense incurred by him in connection with the administration of the Act. They assert that the respondent's contention that the tax is upon the ginning of the cotton is negatived by the fact that it is not assessed upon all cotton ginned regardless of the amount produced by the owner of the particular farm, and that it amounts per bale to approximately five times the amount of the customary charge for ginning. They call especial attention to those sections of the Act which impose a lien for the tax upon the cotton if it is removed from the gin, forbid transportation of the cotton,—the producers' property,—beyond the county where produced except for storage, and prohibit opening of the bale or sale of the cotton until the tax shall have been paid. They say it is obvious the statute made the ginner a convenient collecting agent to enforce payment of the tax and that the purpose was to force the farmer to pay by prohibiting his use of his excess cotton unless and until he paid; and the latter is, therefore, entitled to maintain an action for the refund of the tax if it was illegally collected.

We hold that the petitioners are entitled to maintain the action. The purpose of the Bankhead Act was to restrict the production of cotton and, to that end, to levy a heavy tax in respect of that produced in excess of the farmer's quota. The tax bore no relation to the ginning of cotton. On the contrary, it was intended to fall, and the Act attempted to make it fall, upon the producers. The assessment of the tax against the ginner was intended to immobilize the cotton in his possession until the producer should liquidate the tax. This is evident from the provisions which impose a lien upon the cotton for the amount of the tax upon removal of it from the gin without payment of the tax and while permitting it to be stored by the producer, forbid the opening of a bale or the sale of it until the tax liability shall have been discharged. Plainly the purpose was that if the ginner should release the cotton to the producer while the tax remained unpaid the lien upon it would insure payment by the producer.

The scheme of the Act sets the case apart from any to which our attention has been called arising under other taxing acts. The collector was part of the machinery for compelling the farmer to pay the tax, for immobilizing the cotton and making it unusable

until the assessment he had made against the ginner was satisfied by payment of the tax. Whether or not the tax was imposed upon the petitioners, they are, according to accepted principles entitled to recover unless they were volunteers, which they plainly were not because they paid the tax under duress of goods.

The judgment is reversed and the cause remanded for further proceedings in conformity with this opinion.

Reversed.

Mr. Justice REED took no part in the consideration or decision of this case.

A true copy.

Test:

Clerk, Supreme Court, U. S.